

August 22, 2018

Mr. Scott A. McGovern
Design Collective, Inc.
601 E. Pratt Street, Suite 300
Baltimore, Maryland 21202

Re: Colgate Elementary School Replacement
Forest Conservation Variance
DEPS Tracking Number 07-18-2766

Dear Mr. McGovern:

A request for a variance from Baltimore County's Forest Conservation Law was received by this Department on July 19, 2018, and proposes to impact ten of the ten specimen trees on this approximately 5-acre property, which is an existing elementary school, and the subject of a proposed replacement school. The property is located in the Dundalk section of Baltimore County. It is immediately bounded by multi-family residences, with nearby manufacturing facilities, and within close proximity to the intersection of Eastern Avenue and North Point Boulevard.

The impacted trees are 6 Willow Oaks (*Quercus phellos*) 30"-44"-diameter at breast height (DBH), 3 Pin Oaks (*Quercus palustris*) 31"-40" DBH, and 1 Honey Locust (*Gleditsia triacanthos*) 30" DBH, all in fair to good condition. Almost the entire site is within the limits of disturbance (LOD), where significant portions of the trees' critical root zones (CRZ) are located within the LOD. The trees were planted many decades ago as street landscape trees. No forest is found on site.

The Director of DEPS may grant a special variance from the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One of the three criteria under Subsection 33-6-116 (d) must be met, and all three of the criteria under Subsection 33-6-116 (e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The location of the limits of disturbance and impacts to specimen trees is determined

by the activities required to accomplish the objective of removing an existing, aging school and replacing it with new, updated school buildings, athletic fields, parking lots, infrastructure, stormwater management, etc. Tree protection devices cannot be utilized, given the extent of the CRZs within the LOD. This site is unusually small and the LOD cannot be adjusted. Denying this variance request would deprive the owner of all beneficial use of the property; thus, this criterion is met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The general conditions of the neighborhood are multi-family residences, manufacturing, and the school. The need for the variance arises from the unique circumstances of the locations of the specimen trees on the site and the location of the LOD. Adjusting the LOD to minimize or avoid impacts to the trees is not possible due to the requirements of the overall project. The petitioner has shown that his/her plight is due to these unique circumstances, and not from general conditions of the neighborhood, therefore, this criterion is met.

The third criterion (Subsection 33-6-116 (d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The proposed development activity is to replace a school (on the same site) that has been in the neighborhood for more than 90 years, which will not alter the essential character of the neighborhood, and this criterion is met.

The fourth criterion (Subsection 33-6-116 (e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The removal of the specimen trees will not impact forest habitat, wetlands, streams, (none of which were found on site) or water quality. Furthermore, sediment control measures and stormwater management regulations must be addressed. This criterion is met.

The fifth criterion (Subsection 33-6-116 (e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance, which is the result of actions taken by the petitioner. The petitioner has not taken any action necessitating this variance request. Therefore, this criterion is met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of DEPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code. The limits of disturbance for the replacement of an existing school will result in unavoidable impacts to specimen trees. Mitigation for impacts to the specimen trees will be addressed by the payment of a fee-in-lieu of planting in the amount of \$11,885.96. Mitigation to satisfy the afforestation requirement of 0.8-acre will be addressed by the payment of a fee-in-lieu of planting in the amount of \$17,424.00, at a rate of \$0.50 per square foot. Therefore, this criterion is met.

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Based upon our review, this Department finds that the required variance criteria have been met. Therefore, the variance request is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code contingent upon the following:

1. A Forest Conservation Plan mylar must be approved prior to the issuance of any permit.
2. Mitigation must be provided, as specified above, prior to the issuance of any permit.
3. The following note must appear on all plans for this project, including the final Forest Conservation Plan, that states: "A Forest Conservation Variance was granted by Baltimore County DEPS to allow the removal of ten specimen trees. In this case, mitigation was addressed by the payment of a fee-in-lieu of planting in the amount of \$11,885.96."

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and an amended variance request.

Please have the property owner sign the statement below and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Thomas Panzarella at (410) 887-3980.

Sincerely yours,

David V. Lykens
Deputy Director

DVL:tcp

c: Marion Honeczy-DNR